IN THE

Supreme Court of the United States

October Term, 1981

GOLD DEPOSITORY AND LOAN COMPANY, INC.,
Petitioner,

v.

2720 WISCONSIN AVENUE COOPERATIVE ASSOCIATION, INC., *et al.*,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE DISTRICT OF COLUMBIA COURT OF APPEALS

BRIEF FOR 2720 WISCONSIN AVENUE COOPERATIVE ASSN., INC. IN OPPOSITION

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June 17, 1982

QUESTION PRESENTED

Whether an injunction against enforcement of certain liens and an order transferring title to certain property constituted a denial of due process.

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OPINIONS BELOW

The opinion of the District of Columbia Court of Appeals is reported at 441 A.2d 956. The opinions of the Superior Court of the District of Columbia are reported at 106 Wash. L. Rptr. 1417 (liability) and 107 Wash. L. Rptr. 117 (damages).

JURISDICTION

The judgment of the District of Columbia Court of Appeals was entered on February 2, 1982. The order denying Petition for Rehearing and Rehearing En Banc was

entered on February 23, 1982. Petitioners have invoked the Court's jurisdiction under 28 U.S.C. § 1257(3).

CONSTITUTIONAL PROVISION AND STATUTES INVOLVED

The Due Process Clause of the Fifth Amendment to the Constitution is quoted in Petitioner's Brief at page 2.

28 U.S.C. § 1257(3) is set forth in full text in Petitioner's Appendix at page 94a.

STATEMENT

A. Background

This case, which involves issues ancillary to the litigation and judgments rendered in *2720 Wisconsin Ave. Coop. Ass'n., Inc. v. Wisconsin Ave. Associates, Inc.*, C.A. No. 2583-76 (D.C. Super. April 27, 1979) *petition for cert. filed*, No. 81-2122 ("main Superior Court litigation"), arises from the post-judgment issuance of an injunction barring petition, Gold Depository and Loan Company Incorporation ("GLDC"), a wholly-owned subsidiary of a named defendant in the main Superior Court litigation and controlled by the principal individual defendant, A.V. Laurins, from attempting to sell certain cooperative apartment units, by foreclosure sale, in the face of a final judgment and permanent injunction issued in the main Superior Court litigation barring such sale.

The Mutual Ownership Contracts upon which GDLC's claims rest represented membership interests in cooperative apartments at 2720 Wisconsin Avenue. They had been assigned to Wisconsin Avenue Associates, Inc. ("Associates") by 2720 Wisconsin Cooperative Associa-

tion, Inc. ("Cooperative") on December 6, 1974, at a time when there was a nearly complete interlock between the officers and directors of the two entities and both were under the control of A.V. Laurins (Pet. App. 3a-4a, 11a). The agreements by which the assignment from the Cooperative to Associates was effected strictly delineated the purpose for which the assignment was being made, *i.e.*, for the *sole purpose* of Associates selling the Mutual Ownership Contracts to members of the public interested in cooperative home ownership (Pet. App. 22a, 34a, 59a-61a). However, notwithstanding the limited purpose of the assignment, on October 6, 1976 (approximately seven months after the commencement of the main Superior Court litigation), Associates executed 12 promissory notes in favor of 2720 Limited Partnership, yet another named defendant and Laurins-controlled entity. (Pet. Ap. 3a, 5a). The notes were purportedly secured by a pledge of the Mutual Ownership Contracts for the eleven cooperative units then remaining unsold, as to which the Cooperative had asserted its entitlement in the main litigation. (Pet. App. 2a, 5a, 30a, 34a). Subsequently, the notes were assigned to Co-op Mortgage Investors L/P (CMI"), likewise a named defendant in the main Superior Court litigation and under Laurins' control. (Pet. App. 5a). On January 5, 1978, Associates executed another promissory note in favor of yet another corporation controlled by Laurins. That note was secured by a further pledge of nine of the eleven Mutual Ownership Contracts. (Pet. App. 5a-6a).

On June 27, 1978, the Superior Court entered its opinion on issues of liability in the main Superior Court litigation, *inter alia*, enjoining the defendants therein and all parties in active concert with them from selling or leasing the unsold units. (Pet. App. 37a). On August 8, 1978,

Laurins formed Co-op Investment Bankers ("CIB") (later found by the Superior Court to be "a continuation of CMI"). (Pet. App. 3a n.2, 24a). The October 1976 promissory notes were endorsed over to CIB by CMI; CIB duly transferred the notes to its wholly-owned subsidiary, petitioner GDLC, the president of which was, not surprisingly, A.V. Laurins. (Pet. App. 7a. 105a-107a). GDLC also received the January 1978 note. (Pet. App. 7a, 114a-117a).

The opinion on damages was rendered in the main Superior Court litigation in December 1978. (Pet. App. 38a, 55a-58a). However, the Final Judgment, which, *inter alia,* required the return of the eleven Mutual Ownership Contracts to Cooperative and permanently enjoined defendants and all those in active concert and participation with them from "performing any act designed to accomplish the sale of further leasing" of the eleven cooperative units, was stayed by virtue of a Chapter VII petition filed by Associates. (Pet. App. 8a, 56a-57a). The stay was lifted on June 14, 1979, the Bankruptcy Court finding that Associates' petition had been "filed for the purpose of delaying or thwarting the plaintiffs in the Superior Court and not with any eye toward any legitimate relief under the Bankruptcy Act." (Pet. App. 8a-9a).

On July 10, 1979, GDLC went into action, issuing default letters to Associates with respect to the October 1976 notes and a demand for payment of the January 1978 promissory note. The letters stated that Associates' failure to make payment by July 16, 1979 would result in a public sale of the eleven apartment units (Pet. App. 9a, 63a-88a).

B. Proceedings in the Superior Court

Upon becoming aware that Laurins, through his various entities, was thus attempting to circumvent the Final Judgment rendered in the main Superior Court litigation, plaintiffs therein sought and obtained a Temporary Restraining Order and Order to Show Cause why defendants and GDLC should not be held in contempt. (Pet. App. 9a. 89a-95a). Following a hearing on August 2, 1979 at which counsel for GDLC advanced essentially the same arguments as presented in its Petition herein (Pet. App. 96-102a, 118a-122a, 162a) and had them rejected by the court, which cited the limited purposes for which the Mutual Ownership Contracts had been asssigned to Associates in the first place and the unbroken chain of Laurins' control, the Superior Court found the GDLC was controlled, operated, and in active concert and participation with Laurins, that the Court had specifically enjoined Laurins and the other defendants, as well as those in active concert with them, from performing any act designed to accomplish the sale or further leasing of the eleven units at issue, and that Laurins, through GDLC, had attempted to violate the Court's Final Judgment and Order by threatening to sell at auction the Mutual Ownership Contracts for the eleven units. (Pet. App. 126a, 129a). By order entered August 13, 1979, the court held Laurins in civil contempt, issued a preliminary injunction enjoining GDLC from proceeding further with the foreclosure sale, and ordered the defendants and GDLC to return the Mutual Ownership Contracts to Cooperative. (Pet. App. 131a-132a, 134a). Following denial of its motion to amend the August 13 order, GDLC proferred the Mutual Ownership Contracts to the court on September 19, 1979. (Pet. App. 134a).

C. The Decision of the Court of Appeals

GDLC filed Notice of Appeal on October 12, 1979.[1] In a unanimous decision entered February 2, 1982, the District of Columbia Court of Appeals affirmed the trial court's issuance of the injunction against GDLC, finding 1) that Associates' pledge of the eleven Mutual Ownership Contracts as collateral for the promissory notes "contravened the purpose of the assignment agreement"; 2) that the record clearly supported the trial court's conclusion that GDLC was in privity with Laurins; and 3) that GDLC's attempted foreclosure was an effort to circumvent the trial court's order. (Pet. App. 23a-24a).

GDLC's Petition for Rehearing and Rehearing En Banc was denied, *per curiam*, by order entered February 23, 1982. (Pet. App. 170a).

ARGUMENT

The decision of the District of Columbia Court of Appeals and the record below evidences no unconstitutional taking of property without due process.

I. Petitioner first avers that the trial court's order barring enforcement of petitioner's liens was unconstitutional because the court failed to give "serious . . . consideration" as to whether the obligations were valid. (Pet. 7). While petitioner attempts to disparage the qualitative aspects of the hearing it received in the trial court, it is in-

[1]It should be noted that the Kimberly Laurins issue advanced in GDLC's petition (Pet. App. 8) was never a part of the GDLC appeal (Pet. App. 146a-169a). Rather it had been listed as an issue for appeal in the Civil Appeal Statement of Associates in the main Superior Court litigation, but was abandoned prior to briefing and oral argument. There is absolutely no basis for GDLC's puzzling attempt at resurrection in the present context.

escapable that the elements of constitutional due process were afforded to the petitioner: there was notice and an opportunity to be heard that was granted at a meaningful time (i.e., immediately after petitioner began to enforce its obligations). *Fuentes v. Shevin*, 407 U.S. 67 (1972). Petitioner availed itself of the opportunity to be heard by appearing before the trial judge to present its arguments. Petitioner cannot now contend that it was denied due process.

II. Petitioner's claim of an unconstitutional taking from Kimberly Laurins is similarly flawed. Kimberly Laurins is an infant daughter of A.V. Laurins, defendant in the main Superior Court litigation (Pet. 8). The trial court found that petitioner GDLC was controlled, operated, and in active concert and participation with Laurins (Pet. App. 129a), and Laurins was enjoined from selling apartment units. Thus, it was evident that Laurins sought to avoid this bar by transfer to his infant daughter, and this sham was appropriately voided by the trial judge.

The petitioner also failed to present for appeal the due process claim concerning Kimberly Laurins, as discussed *supra* at 6 n.1. Under the Court's recently-reiterated standards in *Webb. v. Webb*, ____ U.S. ____, No. 79-6853 (May 18, 1981), petitioner has failed properly to raise the federal constitutional claim: the District of Columbia Court of Appeals did not pass on this issue in its written opinion; nor was this issue briefed or argued by petitioner *or* related parties in the main Superior Court litigation; nor did petitioner list this issue in its Civil Appeal Statement. Thus, since the petitioner failed to raise this federal claim in the state court proceedings, it cannot be raised in this Court for the first time. *Webb, supra*, at 6 (and cases cited therein).

CONCLUSION

The petition for writ of certiorari should be denied.

Respectfully submitted,

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